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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3613 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SAROJBEN W/O. GOPAL MOHAN CHHARA

Versus

POLICE COMMISSIONER AHMEDABAD

Appearance:

MR ARVIND K THAKUR for Petitioner
MR MA BUKHARI for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 20/12/1999

ORAL JUDGEMENT

1. The Commissioner of Police, Ahmedabad passed an order on 22-3-1999 in exercise of powers under Section 3(1) of the Gujarat Prevention of Antisocial Activities Act 1985 (for short PASA Act) detaining the petitioner

under the provisions of the said Act. In the grounds of detention the detaining authority took into consideration the six offences registered against the petitioner under Bombay Prohibition Act. The authority also took into consideration statements of two witnesses whose identity has not been disclosed by the authority in exercise of powers under Section 9(2) of the PASA Act. While exercise these power the authorities recorded its subjective satisfaction about the correctness and genuineness of the statements made by these witnesses and the fear expressed by them qua the petitioner in respect of the person and properties of the witnesses. The detaining authority took into consideration the possibility of resorting to less drastic alternative remedies and ultimately came to the conclusion that in order to immediately prevent the petitioner from pursuing her illegal and antisocial activities it is necessary to prevent her under the PASA Act.

2. The petitioner detenu has approached this court with this petition under Article 226 of the Constitution of India. Mr. Gagdekar learned advocate appearing for learned advocate Mr. A.K. Thakur for the petitioner has raised only one contention. His contention is that the disciplinary authority did not have Forensic Science Laboratory report with it when the order was passed and therefore the subjective satisfaction arrived at by the detaining authority was not based on sufficient material. It would stand therefore vitiated and the detention therefore will have to be quashed. He therefore urges that the petition may be allowed. He has not pressed any other grounds nor has he relied upon any authority.

3. Mr. Bukhari learned AGP appearing for the respondents submitted that the authority has taken into consideration all relevant factors. He has perused the file of the detaining authority and submitted that the sponsoring authority had forwarded all papers relating to the offence registered against the petitioner for consideration of the detaining authority while passing the order. He however candidly states that FSL report did not form part of those papers. He submitted however that there was sufficient material before the authority in the form of the statements of witnesses, panchnama, etc. for arriving at subjective satisfaction which have been taken into consideration by the detaining authority. He therefore urged that the petition cannot be allowed on the ground argued by Mr. Gagdekar.

4. The only question that requires to be considered by this Court is whether the order passed by the

detaining authority detaining the petitioner, while considering offence registered against her under Bombay Prohibition Act, in absence of FSL report, would stand vitiated.

5. It is a settled proposition of law that this Court while exercising powers under Article 226 of the Constitution of India will not dwell upon the question of sufficiency or insufficiency of the grounds/material considered by the detaining authority while arriving at the subjective satisfaction

6. The only argument that is advanced on behalf of the petitioner is that the material before the detaining authority was not sufficient for considering the registered offences against the detenu as the FSL report was not there. Against this it is clear from the affidavit in reply filed by the detaining authority that he arrived at the satisfaction about the petitioner being bootlegger on the basis of the documents relating to six criminal cases registered against the detenu and from the material as well as the statements of witnesses. He arrived at a subjective satisfaction that the petitioner is a bootlegger, after careful scrutiny, study, examination and consideration of material placed before the detaining authority including the papers pertaining to the criminal cases and statements of witnesses. He came to the conclusion, after subjective satisfaction upon application of mind, that the detenu is dealing in illicit liquor and she is disturbing the public order and her antisocial activities may cause grave danger to the life, property or public health.

6. The detaining authority has taken into consideration all relevant papers relating to these criminal cases, so also the statements of witnesses and has arrived at subjective satisfaction. This court cannot deal with the question whether the material was sufficient or insufficient for arriving at subjective satisfaction only because FSL report was not before the detaining authority. It cannot be said that there was no material for arriving at subjective satisfaction.

7. In this view of the matter, the petition cannot be entertained and the same is hereby dismissed. Rule is discharged. No costs.

(A.L. Dave, J)